IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7646 of 1995

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMIRBEN WD/O.UMAR QURESHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7646 of 1995

MR MB FAROOQUI for Petitioner No. 1

Ms. Mita S. Panchal, AGP for Respondent No. 1-2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 20/12/2004

ORAL JUDGEMENT

1. This petition under Article 226 of the Constitution of India is filed by the widow of late Shri Umar Qureshi, who was for some time in the services of

the Government, on the basis of which, it is claimed that the petitioner is entitled to family pension under the Government Resolution dated 11th May 1990, by which, the benefit of family pension provided in the Scheme of 1972 is made available to those persons who have completed five years of continuous service, and the eligible family members were declared as entitled to get the benefit of family pension.

2. According to the learned advocate for the petitioner, Mr. Farooqui, the late husband of the petitioner had completed more than five years of service in view of the fact that, initially, the husband of the petitioner was employed as peon in the office of Diwan of Former State of Bhavnagar from October 1944 to 30.4.1949 and, thereafter, on merger of Bhavnagar State into Saurashtra State, the husband of the petitioner was continued with the Office of the Collector, Bhavnagar, with effect from 1.5.1949 to 12.11.1953. It is further stated that the services of the husband of the petitioner came to be terminated with effect from 13.11.1953 and was not absorbed in the regular establishment till his death on 18th October 1990. The learned advocate for the petitioner, therefore, submitted that the aforesaid service record of the husband of the petitioner is adequate enough to claim the family pension for the late husband, who was in the government service, according to the petitioner. It is further stated by the learned advocate for the petitioner that the husband of the petitioner had also worked with the office of the Collector, Bhavnagar, for about four years and, therefore also, continuity of service as peon with Diwan of Former State of Bhavnagar and, thereafter, the service with the Collector Office, Bhavnagar, after merger of the erstwhile State of Bhavnagar into Saurashtra State, can also be considered and clubbed for the benefit of family pension.

3. Learned Assistant Government Pleader, Ms. Mita S. Panchal, has drawn the attention of the Court to the affidavit-in-reply filed by the respondent No.1, where, the claim of the petitioner is disputed on the fact that the petitioner was given temporary assignment on leave vacancy from 1.1.1949 to 31.3.1949 and, after giving a notice, the said appointment was also terminated vide order dated 30.4.1949. However, again in the scarcity work, the late husband of the petitioner was given assignment as peon and, thereafter, he was again taken back as peon. The record concerning to the service of the husband of the petitioner from 1.1.1953 to 31.3.1953 does not disclose anything, but, it discloses that, in

March 1953, the services of the husband of the petitioner were terminated. She has further stated that, again, from 1.10.1953 to 12.11.1953, the husband of the petitioner had worked as peon and, thereafter, for all the purposes, the services came to be terminated with effect from 12.11.1953.

3.1 According to the learned Assistant Government Pleader, Ms. Mita S. Panchal, this break in service does not show continuity in service of the late husband of the petitioner and even, whenever he was appointed, it was only a temporary assignment given to him either as peon on leave vacancy, or, thereafter, in the scarcity work undertaken by the Government. Therefore, according to the learned Assistant Government Pleader, Ms. Mita S. Panchal, the late husband of the petitioner had not completed five years of continuous service as a government servant, and the benefit of Family Pension Scheme, 1972, is not available to the petitioner and, therefore, this is not a fit case, which requires interference by this Court in exercise of its powers under Article 226 of the Constitution of India.

4. I have heard the learned advocates for the parties. I have also perused the record of the case. I do not find any merit in the submissions of the learned advocate for the petitioners in as much as even the temporary service period of the husband of the petitioner is disputed, and he was not continued in temporary government service. Clause 5 of the Government Resolution dated 11th May 1990 clearly gives certain benefits to the family members of those government servants who have completed five years of continuous service and, in the present case, on the basis of record, no case is made out for continuation of service of five years of the late husband of the petitioner. There is no substance in the petition and the petition is required to be rejected.

5. In the result, the petition fails and is rejected. Rule is discharged with no order as to costs.

(Anant S. Dave, J.)
(swamy)